BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL, 1 Petitioner, v. CITY OF ST. JOSEPH Respondent.	)	Public Case No. AC 2011-005

DECISION

In this case, Service Employees International Union, Local 1 (Local 1), petitions to amend the certification of an existing bargaining unit of employees of the City of St. Joseph (City). The labor organization currently certified by the Board as the representative of this unit, consisting of workers in the City's Water Pollution Control Plant, is Service Employees International Union, Local 2000 (Local 2000). Local 2000's public service units were recently merged into Local 1, which now asks the Board to amend its certification of Local 2000 as the bargaining representative of the City's Water Pollution Control Plant unit to reflect that, following the merger, Local 1 is the representative of the unit.

Local 1 contends that the requested amendment is merely a routine internal administrative matter that does not alter the substance of the unit's representation. The City argues that the amendment should not be approved because the members of the unit were not given the opportunity to vote on whether or not they support the merger of Local 2000 into Local 1 and to representation of their unit by the reorganized union.

The Board grants the requested amendment.

JURISDICTION AND PROCEDURAL BACKGROUND

Local 1 filed its petition requesting an amendment to certification on October 1, 2010. Whether or not to amend the certification of a bargaining representative involves an issue of

majority representative status. This Board is authorized to hear and decide such issues. § 105.525, RSMo.

The Board held a hearing in Jefferson City, Missouri, on January 10, 2011, to allow the parties to provide testimony and other evidence regarding the issues raised by Local 1's petition. Board Chairman Jim Avery, Employer Members Emily Martin and Leonard Toenjes, and Employee Members Lewis Moye and Robert Miller were present in person to hear the case. Representatives of Local 1 and of the City attended the hearing and had a full opportunity to present evidence and make arguments. Both parties also took advantage of the opportunity they were given to file post-hearing briefs.

Based on its review of the whole record, including the evidence presented, arguments made, and briefing filed, the Board issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board certified Service Employees International Union (SEIU), Local 96, as the exclusive bargaining representative for workers in the City's Water Pollution Control Plant in 1989. SEIU, Local 2000, succeeded Local 96 in representing this Water Pollution Control Plant unit in about 2003. The Board formally certified Local 2000 as the exclusive bargaining representative of the unit in 2007.

On October 27, 2009, a representative of Local 2000 mailed the City a memorandum giving it notice that it had entered into a servicing agreement with SEIU, Local 1, to carry out on its behalf representation functions in the Water Pollution Control Plant unit. Thereafter, the City dealt with Local 1 on bargaining unit issues and grievances. City representatives also met with a representative of Local 1 in a preliminary contract negotiation meeting and then sent this Local 1 representative a proposed contract.

On September 15, 2010, SEIU's International President ordered that public service units represented by Local 2000 be merged into Local 1. Local 1 filed its petition for amendment of certification on October 1, 2010.

Following the merger of the SEIU locals, the Water Pollution Control Plant unit's union steward remained the same. The Local 1 official who had been working with the unit after Local 1 entered into the servicing agreement with Local 2000 continues to provide the same services as he did before the merger. Nothing about bargaining operations within the Water Pollution Control Plant unit has changed after the merger.

CONCLUSIONS OF LAW

I. JURISDICTIONAL ISSUES

The City initially raises two issues it describes as jurisdictional. First, the City urges that Local 1, which filed the petition for amendment of certification in this case, had no authority to do so under 8 CSR 40-2.055(1). This regulation provides that the parties that may file a petition for amendment of certification are "[t]he certified representative or the public employer." The City contends that, because Local 2000, and not Local 1, is the certified representative, Local 1 may not file a petition for amendment of Local 2000's certification.

Application of the City's position, however, would prevent the filing of a petition for amendment of certification in any circumstance in which the certified representative of a unit has merged into another union because, through such a merger, the certified representative ceases to exist, at least in the precise form that was certified. The regulation neither intends that result, nor by its terms requires that result. The union that survives a merger succeeds to the rights of the certified representative it has merged with, at least to the extent of exercising the authority of the certified representative to file a petition for amendment of certification. *See Scherer v. Laborers' Int'l Union*, 746 F. Supp. 73, 85 (N.D. Fla. 1988) (applying corporation law, court held that when local unions merge the "surviving entity acquires all the rights . . . of the merged union"). *See also* § 351.450(4), RSMo (following merger of corporations, the "surviving . . .

corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises . . . of each of the merging or consolidating corporations . . ."); *Brown v. E.W. Bliss Co*., 818 F.2d 1405, 1410 (8th Cir. 1987) ("Under Missouri law, when two corporations merge, the merged corporation ceases to exist and the other continues as its successor."). Local 1, as the successor of Local 2000, had the authority to file the petition for amendment in this case.

In its second jurisdictional issue, the City contends that the petition filed in this case does not meet the requirement of 8 CSR 40-2.055(2)(C) that there be "[a] statement by petitioner setting forth reasons as to why amendment is requested." On the contrary, even though the Board's petition form does not specifically provide a place to set out the reason for the petition, Local 1 provided its reason in the space for naming the "Certified Bargaining Agent" by stating "Service Employees International Union, Local 2000, merged, now SEIU Local 1." Even if this were not enough, Local 1 explained the merger in greater detail in the cover letter it provided with the petition. Local 1 adequately complied with the regulation.

II. AMENDMENT OF CERTIFICATION STANDARD

Petitions for amendment of certification are used to amend existing certifications "to reflect changed circumstances (such as merger or affiliation) in a unit . . . where no question concerning representation exists. 8 CSR 40-2.055(1). A "question concerning representation" means a question as to whether there is a reasonable basis to conclude that the certified representative no longer retains majority support within the designated bargaining unit following the certified representative's change in circumstances.

In deciding whether to grant or deny an amendment of certification, the Board has typically examined:

> (1) Whether or not there is substantial continuity of the bargaining representative, and
>
> (2) Whether or not the election concerning the amendment of certification was conducted with adequate "due process" safeguards (such as adequate notice of an election among the membership of the union certified to represent the unit to approve the proposed affiliation, merger, or transfer; sufficient

> opportunity to discuss the proposal; and reasonable precautions taken to maintain ballot secrecy).

Int'l Union of Oper. Engrs., Local 2, v. Missouri Dep't of Transp., Case No. AC 2000-048, at 10-12 & 15 (SBM 2000); *Prof'l Fire Fighters' Ass'n v. City of Clayton*, Case No. AC 91-019, at 4 (SBM 1991); *Kansas City Ass'n of Educ. Office Personnel v. Kansas City School Dist*., Case No. AC 91-012, at 4-5 (SBM 1991). The Board adopted this standard based on interpretations of the National Labor Relations Act (NLRA) by federal courts and the National Labor Relations Board (NLRB). *City of Clayton*, Case No. AC 91-019, at 4 (citing *NLRB v. Fin. Inst. Employees, Local 1182* (*Seattle-First*), 475 U.S. 192 (1986); *Western Commercial Transp., Inc*., 288 N.L.R.B. 214 (1988)); *Kansas City School Dist*., Case No. AC 91-012, at 4-5 (same). Although federal interpretations of the NLRA are not binding on this Board, it has often looked to such interpretations for guidance and, when it finds them to be persuasive and appropriate under Missouri law, has adopted them in its own decisions. *Baer v. Civilian Personnel Div., St. Louis Police Officers Ass'n*, 747 S.W.2d 159, 162 (Mo. App. W.D. 1988); *Schieffer v. City of Cape Girardeau*, Case No. RD 2009-037, at 5 (SBM 2010); *Int'l Assoc. of Fire Fighters, Local 2665 v. North Jefferson County Ambulance Dist*., Case No. R 2000-049, at 10 (SBM 2001); *Teamsters, Local 245 v. City of Springfield*, Case No. R 86-032, at 5 (SBM 1986).

The interpretation of the NLRA this Board looked to when it adopted its two factor analysis ("continuity of representation" and "election with due process safeguards") for assessing petitions for amendment of certification, however, has been overruled. In *The Raymond F. Kravis Center for the Performing Arts*, 351 N.L.R.B. 143, 146-47 (2007), *enforced*, 550 F.3d 1183 (D.C. Cir. 2008), the NLRB abandoned its requirement that a vote of bargaining unit membership be conducted before a bargaining representative that has affiliated or merged with another union can be considered to have retained majority support of the unit membership. The NLRB reached this decision following a review of the United States Supreme Court's decision in *Seattle-First*, 475 U.S. at 209, that the NLRB had "exceeded its authority [when it

required] that nonunion employees be allowed to vote for affiliation before it would order the employer to bargain with the affiliated union." 351 N.L.R.B at 145-47.[1]

In the *Seattle-First* case, the Supreme Court, emphasizing the importance of continuity in collective bargaining relationships, stated that

> industrial stability . . . would unnecessarily be disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship. . . . In many cases, a majority of employees will continue to support the union despite any changes precipitated by affiliation. In such situations, affiliation does not necessarily implicate the "selection" of a new bargaining representative. The reorganized union may legitimately claim to succeed as the employees' duly selected bargaining representative, and in that case retains a legitimate interest in continuing to bargain collectively with the employer. The [National Labor Relations] Act balances these competing concerns by authorizing the Board to conduct a representation election only where affiliation raises a question of representation. 29 U.S.C. § 159(c). Conversely, where affiliation does not raise a question of representation, the statute gives the Board no authority to act.

475 U.S. at 202-03 (internal quotation marks and case citations deleted). Based on the NLRB's acknowledgement that the failure to allow nonunion members to vote on the affiliation question did not raise a question of representation, the Court held that the employer continued to have an obligation to bargain with the union even after its affiliation. *Id*. at 203-04.

In the *Kravis Center* case, the NLRB held that the Court's "essential holding" in *Seattle-First* was that an employer must continue to recognize a union that affiliates with another union "unless the Board determines that the affiliation raises a question concerning representation." 351 N.L.R.B at 146. Applying this "essential holding" in the context of an existing bargaining representative's failure to conduct a unit membership vote of any kind following its affiliation with

[1] The NLRB acknowledged that *Seattle-First* had been decided 21 years before its decision in *Kravis Center*, but it had never previously found it necessary to resolve the issue of whether a membership vote of any kind is required following an existing bargaining representative's affiliation or merger with another union. 351 N.L.R.B. at 145. In its affiliation cases following the *Seattle-First* decision, it had been able to avoid the issue by either finding that the continuity of representation prong was not met or by finding that both the continuity of representation and the due process prongs had been met. *Id*. at 145 n.13.

another union, the NLRB determined that the lack of such a vote is not sufficient "to raise a question concerning representation, that is, to make it 'unclear whether a majority of employees continue to support the reorganized union.'" *Id*. (quoting *Seattle-First*, 475 U.S. at 202). "[T]he absence of a vote indicates nothing about employee sentiment regarding support for the incumbent union." *Id*.

The NLRB concluded that an assessment of the other prong of its standard regarding union affiliations – that the organizational changes not be "so dramatic that the postaffiliation union lacks a substantial continuity with the preaffiliation union" – is all that is needed to determine whether the affiliation raises a question regarding representation sufficient to call into question the majority support of the union. *Id*. at 147. Where substantial continuity exists, there is no reason to conclude that the reorganized union has lost majority support of the bargaining unit members. As the NLRB explained:

> In cases in which there is substantial continuity between the preaffiliation and postaffiliation union, the postaffiliation union is largely unchanged from the preaffiliation entity—i.e., nothing has happened to the union that would lead one reasonably to think that the employees no longer support it. Thus, when there is substantial continuity, the absence of a vote of the union members on the affiliation would not seem to render unit employee support for the union unclear, as the union has remained largely the same. Accordingly, no question concerning representation would be raised.

Id. The NLRB further held that this focus on the "substantial continuity" factor alone applies with equal force in the case of both affiliations and mergers. *Id*. at 146 n. 21 & 147.

This Board is persuaded by the NLRB's reasoning and conclusion in *Kravis Center* and hereby adopts its "substantial continuity" standard for assessing petitions for amendment of certification. The underlying issue raised by a petition for amendment of certification is whether the certified bargaining representative, after it affiliates or merges with another union, retains majority support of the employees of the bargaining unit. This issue is fairly and appropriately resolved by examining whether the resulting organizational changes are so dramatic that the union as it exists after the affiliation or merger lacks a substantial continuity with the certified

representative as it existed before the reorganization. If not, there is no reason to conclude that the recognized union has lost the support of unit members. 351 N.L.R.B. at 147. The absence of a vote of bargaining unit members with regard to the affiliation or merger has no additional impact on the assessment of whether the resulting union retains majority support. *Id*. As the NLRB did in *Kravis Center*, this Board now discards the "election with due process safeguards" prong of its previous standard as irrelevant.[2]

III. SUBSTANTIAL CONTINUITY BETWEEN LOCAL 2000 AND LOCAL 1

Having determined the standard to apply, the Board now must turn to the question of whether the certified bargaining representative of the City's Water Pollution Control Plant unit, Local 2000, has substantial continuity with Local 1 following the merger of Local 2000 into Local 1. This is a factual issue to be determined by the Board. *Int'l Union of Oper. Engrs., Local 2*, Case No. AC 2000-048, at 11. And it is the party opposing an amendment of certification that bears the burden of proving lack of continuity. *Id*. *See also Kravis Center*, 351 N.L.R.B. at 147 n. 30 (party seeking to avoid its bargaining obligation based on an asserted lack of continuity has burden of proof on that question).

When examining whether there is a lack of continuity of representation after an affiliation or merger, the Board considers "whether the affiliation [or merger] substantially changed the union." *City of Clayton*, Case No. AC 91-019, at 4; *Kansas City School Dist*., Case No. AC 91-

[2] This holding is consistent with *Independence-NEA v. Independence School Dist*., 223 S.W.3d 131, 139 (Mo. banc 2007), in which the Missouri Supreme Court overruled existing case law and held that the Missouri Constitution's guarantee to "employees" of the "right to organize and to bargain collectively" applies to public employees as well as to private employees. The City argues that this decision requires "even greater protection to be provided through the Board's processes," including in its criteria for ensuring that public employees are represented by representatives of their own choosing. City's Brief, pp. 4 & 6. Even before the *Independence-NEA* decision, however, the Board considered the protection of the right of public employees to bargaining representatives of their own choosing to be its duty. As discussed at significant length in this opinion, the abandonment of the election requirement in no way diminishes the protections to the exercise of this right.

012, at 5. Or, as stated in *Kravis Center*, the focus is on "whether the reorganization resulted in a change that is 'sufficiently dramatic' to alter the union's identity." 351 N.L.R.B. at 147 (quoting *May Dep't Stores*, 289 N.L.R.B. 661, 665 (1988), *enforced*, 897 F.2d 221 (7th Cir. 1990)). This inquiry will include a review of such factors as whether the reorganized union retains the autonomy the pre-existing union had, whether local officers have changed, and whether the established procedures are altered. *City of Clayton*, Case No. AC 91-019, at 4; *Kansas City School Dist*., Case No. AC 91-012, at 5. But "the Board's analysis, rather than being mechanistic and using a strict check list, [should be] directed at analyzing the totality of circumstances in order to give paramount effect to employees' desires." *Int'l Union of Oper. Engrs., Local 2*, Case No. AC 2000-048, at 11, *quoting Sullivan Brothers Printers, Inc*., 317 N.L.R.B. 561, 563 (1995) (overruled as to the "due process" prong only by the *Kravis Center* decision)).

Although sparse, the evidence in this case indicates that the certified bargaining representative of the Water Pollution Control unit, Local 2000, has not been substantially changed by its merger into Local 1.[3] The unit's union steward under Local 2000 continued to serve the unit after the reorganization. Before the merger Local 1 had already been providing services for Local 2000 and the Local 1 official who worked with the unit during that time continues to provide the same services as he did before the merger occurred. Nothing about the bargaining operations changed within the Water Pollution Control Plant unit as a result of the merger.

It is also significant that Local 2000 and Local 1 are both affiliated with the same international union. *Int'l Union of Oper. Engrs., Local 2*, Case No. AC 2000-048, at 15. Where two sister locals merge, there is little inherent potential for significant change. *Id*. The

[3] To whatever extent the sparseness of the record may fail to reflect any actual lack of continued majority support of Local 1 by unit members, these unit members possess the ability to raise that issue through a petition for decertification filed pursuant to 8 CSR 40-2.040.

obligations owed by unit membership to the international union, the responsibilities of the international to the unit membership, and the rights of the unit membership under the international union's constitution all remain the same. *Id*. (citing *Montgomery Ward & Co*., 188 N.L.R.B. 551, 552 (1971)).

Based upon the totality of the circumstances, the Board finds that there is substantial continuity between Local 2000 and Local 1 and thereby concludes that there is no reason to question whether Local 1 continues to hold majority support among the workers in the Water Pollution Control Plant unit. Therefore, this case raises no question concerning representation justifying denial of the petition for amendment. 8 CSR 40-2.055(1).

ORDER

Finding substantial continuity between Local 2000 and Local 1 and concluding that no question concerning representation arises from the merger of these two locals, the certification of SEIU, Local 2000, in Case No. RD 2007-011 as the exclusive bargaining representative of the non-supervisory employees of the City of St. Joseph's Water Pollution Control Plant, dated May 3, 2007, is hereby amended to reflect that SEIU, Local 1, is now the certified exclusive bargaining representative for that unit, which is specifically described as:

> All non-supervisory employees of the Water Pollution Control Plant including Plant Operator, Lead Plant Operator, Plant Maintenance Mechanic, Maintenance Technician, Master Maintenance Electrician, Motor Equipment Operator III, Laborer, Industrial Painter, Laboratory Analyst, Secretary, Senior Account Clerk, Pretreatment Lab Technician, Inventory Control Technician, and Environmental Services Coordinator; excluding all supervisors, police, fire fighters, service and maintenance, and professional employees.

Signed this 6th day of September, 2011.

STATE BOARD OF MEDIATION

Jim Avery, Chairman

Emily Martin, Employer Member

Leonard Toenjes, Employer Member

Lewis Moye, Employee Member

Robert Miller, Employee Member